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September 17, 1958

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CONCORD, N.H.

Mr. Paul E. Farnum
Acting Commissioner of Education
State House Annex
Concord, New Hampshire

Dear Mr. Farnum:

This is in reply to your letter of September 25, 1958 in which you request our advice as to whether a local school board or school committee may legally pay the tuition for an "emotionally handicapped child" attending a private school offering a program for such children.

As you know, this office has no authority to render official legal opinions which have any binding effect on local school districts.

Accordingly, the opinions expressed herein are given in order to assist you in performing the functions of your office, and this letter is not to be construed as an official ruling binding on any school district.

Under the provisions of RSA 186:45 local school districts are required to pay the tuition of any handicapped child attending any public or private school approved by the State Board of Education which offers special instruction for the training or education of handicapped children. However, the term "handicapped child" as used in Sec.45 and other sections of the subdivision is defined in RSA 186:41 to be a child ". . . whose activity is or may become so far restricted by defect or deformity of bones or muscles or the impairment of function thereof, or by other physical handicap, as to reduce his normal capacity for education and self-support." (emphasis added) It is obvious from this definition that RSA 186:45 does not authorize the payment of tuition at a private school for a child whose only handicap is emotional in nature.

In the subdivision of RSA 186 entitled "Intellectually Retarded Children" which now appears as RSA 186:50-a through c (supp) provision is made for the payment of expenses and tuition by a local school board for instruction at a special school of children who are ". . . at least three years mentally retarded . . ." This subdivision, however, is not broad enough to include emotionally handicapped children unless they are also at least three years mentally retarded.

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R. Paul E. Farnum
Acting Commissioner of Education

-2-

9/17/58

Examination of RSA 193:4 and RSA 194:27,28, which provide for the payment of tuition by a local school district for children attending elementary or high schools in other districts, authorize the payment of tuition only at public schools.

The Legislature having made specific provision for the payment of tuition for physically handicapped children and intellectually retarded children, we are of the opinion that in the absence of specific enabling legislation local school districts may not legally pay the tuition for an emotionally handicapped child attending a private school unless such child is also either physically handicapped or at least three years mentally retarded.

Very truly yours,

GTR,Jr/m

George T. Ray, Jr.,
Assistant Attorney General